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IN THE UNITED STATES DISTRICT COURT
 FOR THE
 NORTHERN MARIANA ISLANDS

KENNETH COUTURE,)	CV NO. 05-0024
)	
Plaintiff,)	
)	
v.)	REPLY TO DEFENDANTS' OPPOSITION
)	TO PLAINTIFF'S MOTION FOR
)	CONTINUANCE TO CONDUCT
AMERICAN OVERSEAS MARINE))	ADDITIONAL DISCOVERY PURSUANT
CORPORATION and GENERAL DYNAMICS))	TO FED.R.CIV.P 56(e)
CORPORATION,)	
)	Date: March 15, 2007
Defendants.)	Time: 10:30 a.m.
)	Judge: Munson

In their opposition, Defendants claim that Plaintiff has not met the standard needed to be given a continuance under Rule 56(f). "[A] district court should continue a summary judgment motion upon a good faith showing by affidavit that the continuance is needed to obtain facts essential to preclude summary judgment. Thus, the defendants must show (1) that they have set forth in affidavit form the

1 specific facts that they hope to elicit from further discovery, (2) that the facts sought exist, and (3) that
2 these sought-after facts are “essential” to resist the summary judgment motion.” *State of California v.*
3 *Campbell*, 138 F.3d 772, 779 (9th Cir. 1998).

4 Plaintiff has made these showings in his motion and the declaration of counsel supporting the
5 Rule 56(f) motion. Plaintiff states that he needs an opportunity to question AMSEA and Gen Dyn
6 personnel, including Thom Merrell, Captain David Hagner and Chief Mate Kirk in order to show that
7 AMSEA and Gen Dyn has control over the day to day operations of the Vessel. *See* Berline Decl at page
8 4, ¶ 39. These facts exist because, logically, someone must have day to day operational control over the
9 Vessel and it can be only AMSEA and/or Gen Dyn or the United States. Finally, Plaintiff has shown
10 that the facts that determine who had operational day to day control over the ship is essential to resist
11 the summary judgment motion. There is no dispute that a key element to the application of the SIAA
12 is “who has operational control of a time chartered vessel.” Plaintiff’s Memorandum at 7; *See also*
13 *Berline Decl.* at 4, ¶¶ 38 and 39.

14 Moreover, Plaintiff has shown that his need for this discovery is based solely on Defendants’ bad
15 faith litigation tactics in withholding discovery in violation of both the spirit and black letter law of the
16 Federal discovery rules. *See* Plaintiff’s Motion for Sanctions. Accordingly, Plaintiff’s request is made
17 in good faith.

18 Incredibly, Defendants oppose Plaintiff’s Rule 56(f) motion on the basis that Plaintiff was not
19 diligent about forcing Defendants to reveal their defense based upon PVA and SAA. The Defendants
20 state that they “have not ‘withheld’ any information from Plaintiff; in contrast Plaintiff has not been
21 diligent or complete in discovering the PVA and SAA defenses and whether or not supporting facts
22 exist.” *See* Defendant’s Memorandum at 2-3. Defendants further state that “had Plaintiff [posed the
23 proper discovery to Defendants], Defendants would have been obligated to (1) reveal the defenses of the
24 bar created by federal statutes the PVA and the SIAA. . .” *Id.* at 3. In other words, they admit that they
25 intentionally withheld this information from Plaintiffs.

26 Clearly, Defendants knew about the alleged PVA and SIAA defenses since the beginning of this
27 matter. Just as clear is the fact that Defendants intentionally hid these potential defenses from Plaintiff,
28 consciously choosing to cloak them in vague language such as “all defenses allowed by federal and

1 local statutes and applicable common law, which may become apparent as discovery is conducted”
2 instead of candidly disclosing them to Plaintiff. *See* Defendants’ Answer at page 5 attached as Exhibit
3 E to the Berline Decl. filed in support of Plaintiff’s Motion for Sanctions Against Defendants Pursuant
4 to Fed.R.Civ.P. 37(c)(1).

5 What is worse is that the Defendants, a huge defense contractor with tremendous resources,
6 vigorously litigated against the Plaintiff, a mere seaman, for nearly two years until the statute of
7 limitations ran out on the PVA and the SIAA, before filing their summary judgment on the last day of
8 the filing deadline. With the exception of the cursory use of Plaintiff’s interrogatories, answered by
9 Plaintiff on November 11, 2005, Defendants’ entire motion for summary judgment is based on
10 documents and evidence that were solely and exclusively in the Defendants’ possession since the
11 beginning of the litigation. Documents and other evidence that was withheld from Plaintiff in violation
12 of the discovery rule and never disclosed to Plaintiff until January 8, 2007. In other words, Defendants
13 did not need even a shred of evidence collected over the two years of litigation via written discovery and
14 depositions in order to bring this summary judgment. However, the fact remains that the Defendants
15 waited until the statute of limitations ran on the very statutes they claim hold Plaintiff’s exclusive
16 remedy. This is the very definition of bad faith!

17 Because Plaintiff has made a sufficient showing of needed facts that are available through
18 additional discovery, this Court should grant Plaintiff Motion for a Continuance if this Court feels that
19 Defendants’ Motion for Summary Judgment has any merit whatsoever.

20 Dated this 15th day of March, 2007

21 /s/ Bruce Berline
22 BRUCE BERLINE
23 WILLIAM M. FITZGERALD
24 Attorneys for Plaintiff